

REMARKS

Objections To The Drawings:

In the Office Action, the Examiner objected to the drawings on the basis that the ovulation prediction kit was not depicted in the figures. The attached replacement drawing sheet includes a new FIG. 3 in addition to the previous FIG. 2 and replaces the original sheet that included only FIG. 2. In FIG. 3, the ovulation prediction kit is depicted and referenced by numeral 400. Accordingly, Applicant respectfully requests that the objection to the drawings be withdrawn.

Claim Rejections:

In accordance with the Office Action, Claims 13-17 stand rejected, and pursuant to this Amendment previously withdrawn Claims 1-12 have been canceled and new Claims 18-31 have been added. More particularly, the Examiner rejected Claims 13-15 and 17 under 35 U.S.C. §102(b) contending that such claims were anticipated by the non-patent "Fertility Awareness" reference and alternatively by United States Patent No. 1,661,877 to Costello, rejected Claims 13-15 and 17 under 35 U.S.C. §102(e) contending that such claims were anticipated by United States Patent No. 6,747,917 to Jennings et al. (Jennings), and rejected Claim 16 under 35 U.S.C. §103(a) contending that such claim was obvious based on "Fertility Awareness" in view of the non-patent Fehring reference and alternatively based on Jennings in view of Fehring. Applicant respectfully submits that independent Claim 13 as presently presented as well as newly added independent Claims 21 and 27 are not anticipated by "Fertility Awareness", Costello or Jennings, nor are such independent claims rendered obvious by "Fertility Awareness" in view of Fehring or by Jennings in view of Fehring.

Independent Claim 13 is directed to an apparatus for providing daily visual indications relating to various phases of a woman's menstrual cycle. The apparatus of Claim 13 includes: (1) a string; (2) a first bead positionable on the string to indicate the first day of a menses phase of the woman's menstrual cycle; (3) a plurality of second beads positionable on the string to indicate each additional day of the menses phase, the second beads having a different appearance from the first bead; (4) a third bead positionable on the string to indicate the day the woman's menses phase crosses over to a fertile phase of the woman's menstrual cycle, the third bead having a different appearance from the first and second beads; (5) a plurality of fourth beads

positionable on the string to indicate each additional day of the fertile phase, the fourth beads having a different appearance from the first, second and third beads; (6) a fifth bead positionable on the string to indicate the day the woman's cervical mucus begins drying up, the fifth bead having a different appearance from the first, second, third, and fourth beads; (7) a plurality of sixth beads positionable on the string to indicate each additional day the woman's cervical mucus is drying up, the sixth beads having a different appearance from the first, second, third, fourth and fifth beads; (7) a seventh bead positionable on the string to indicate the first day of an infertile phase of the woman's menstrual cycle, the seventh bead having a different appearance from the first, second, third, fourth, fifth, and sixth beads; and (8) a plurality of eighth beads positionable on the string to indicate each additional day of the infertile phase, the eighth beads having a different appearance from the first, second, third, fourth, fifth, sixth and seventh beads. The forgoing combination of limitations is not disclosed by any one of "Fertility Awareness", Costello or Jennings and therefore cannot be properly rejected under 35 U.S.C. §102(b) or 35 U.S.C. §102(e) based on one of these references. Instead, Claim 13 should be allowed.

More particularly, the 28-bead necklace disclosed in "Fertility Awareness" does not include eight different types of beads which all have a different appearance from one another. Rather, the 28-bead necklace disclosed in "Fertility Awareness" includes only four different types of beads, namely a red bead, brown beads, white beads, and fluorescent beads. (See "Fertility Awareness" page 11, Col. 1 paragraph 5 through Col. 2 paragraph 2). Likewise, FIGS. 1 and 2 of Jennings depict a necklace or loop 100 or chain 200 that include thirty-two similarly shaped and sized beads, and Jennings describes that the thirty-two beads may be of up to four different colors with a third one of the colors being luminescent. In the case of the necklace or loop 100, Jennings discloses that a smaller optional thirty-third bead may be included to signify the end of the menstrual cycle. (See Jennings, Col. 6, line 28 through Col. 8, line 34). Thus, Jennings discloses at most five different types of beads.

Furthermore, the indications provided by the beads in the "Fertility Awareness" and Jennings references and in the apparatus of Claim 13 are different. "Fertility Awareness" discloses that the red bead indicates the first day of menses, the brown beads indicate a time of infertility, the white beads designate the fertile window, and the fluorescent beads indicate a woman's peak days of ovulation. (See "Fertility Awareness" page 11, Col. 1 paragraph 5 through Col. 2 paragraph 2). Jennings describes that the first color bead represents the first day

of menstrual bleeding, the second color beads represent early and late infertile days, the third color beads represent fertile days, and the fourth color bead (which is the 27th bead on the string) serves as a marker to alert a woman to see her health care provider if she gets her period prior to the 27th day of her menstrual cycle. (See Jennings, Col. 6, lines 28-40, Col. 7, lines 39-51, Col. 8, lines 10-34, and Col. 8, lines 47-59). This in contrast with the present invention wherein the first bead indicates the first menses phase day, the second beads indicate additional menses phase days, the third bead indicates a crossing over from the menses phase to the fertile phase, the fourth beads indicate additional fertile phase days, the fifth bead indicates when the woman's cervical mucus begins drying, the sixth beads indicate additional days on which the woman's cervical mucus is drying, the seventh bead indicates the first infertile phase day, and the eighth beads indicate additional infertile phase days.

In addition to the aforementioned differences with "Fertility Awareness" and Jennings, the beads are not pre-positioned on the string in the apparatus of Claim 13. The apparatus of Claim 13 is used by placing a different, specific bead for each day of monitoring instead of moving a rubber band marker along a pre-configured set of beads each day as with the devices of "Fertility Awareness" and Jennings. (See "Fertility Awareness" page 11, Col. 1 paragraph 5 through Col. 2 paragraph 2 and Jennings, Col. 7, lines 26-38 and Col. 8, lines 35-46). This difference is particularly notable in that the pre-configured necklace of "Fertility Awareness" or necklace or chain of Jennings may not be appropriate for use by women having menstrual cycles falling outside of regular 26 to 32 day cycles. In fact, Jennings specifically acknowledges this at Col. 7, lines 46-51 and Col. 8, lines 47-59. Further, Jennings describes that the ends of the necklace or chain should be securely knotted or fastened to prevent tampering, such that the beads cannot be removed and the order of the beads is preserved. Jennings Col. 6, lines 54-56 and Col. 8, lines 23-26. Thus, Jennings specifically discourages modifications to accommodate different menstrual cycles.

The apparatus of Claim 13 is also of a fundamentally different character than the prayer bead device disclosed in Costello. In this regard, the Costello prayer bead device is pre-configured with a set number of specific beads that are moved to count prayers. As noted previously, the beads of the apparatus of Claim 13 are not pre-configured on the string and instead a bead is placed on the string each day to reflect the nature of the fertility observation of the day. Furthermore, a review of Figures 1-3 of Costello reveals beads having only two

different appearances, namely beads 11 or 12 and beads 14,15, or 16, and the text of Costello does not describe the shape, color, or other differences in the appearance of each of the beads. Also, Costello does not disclose that the beads are positionable on the wire to indicate different days of a woman's menstrual cycle. Rather, Costello discloses that beads 11-15 represent a set of different prayers and beads 16 are moved on the wire to count the number of times the set of prayers have been said by a worshipper using Costello's device. See Costello, lines 31-83.

In addition to the aforementioned differences between the apparatus of Claim 13 and Costello, the purpose of the apparatus of Claim 13 is fundamentally different than the purpose of the Costello prayer device. Costello's prayer device serves as an aid to worship "which can be easily and quickly operated" and "which is compact and which is of attractive appearance." The fertility apparatus while meant to be attractive is not associated with worship or prayers and instead is used to monitor and record the specific signs of fertility that are found in a woman's menstrual cycle. Furthermore, the possibility of using Costello's prayer bead device to provide daily visual indications throughout the entirety of a woman's menstrual cycle is not practicable since only the four beads referenced by numeral 16 are disclosed as being moveable on the wire of the Costello device.

Independent Claim 21 is directed to an apparatus that provides daily visual indications relating to various phases of a woman's menstrual cycle. The apparatus of Claim 21 includes: (1) an ovulation prediction kit for determining the day during a fertile phase of the woman's menstrual cycle when a level of luteinizing hormone released by the woman's pituitary gland surges; (2) a string; (3) a first type of bead positionable on the string to indicate the first day of a menses phase of the woman's menstrual cycle; (4) a plurality of a second type of beads positionable on the string to indicate each additional day of the menses phase; (5) a third type of bead positionable on the string to indicate the day the woman's menses phase crosses over to a fertile phase of the woman's menstrual cycle; (6) a plurality of a fourth type of beads positionable on the string to indicate each additional day of the fertile phase; (7) a fifth type of bead positionable on the string to indicate the day the woman's cervical mucus begins drying up; (8) a plurality of a sixth type of beads positionable on the string to indicate each additional day the woman's cervical mucus is drying up; (9) a seventh type of bead positionable on the string to indicate the first day of an infertile phase of the woman's menstrual cycle; (10) a plurality of an eighth type of beads positionable on the string to indicate each additional day of the infertile

phase; and (11) a ninth type of bead positionable on the string to indicate the day when the luteinizing hormone level surges. The forgoing combination of limitations is not disclosed by “Fertility Awareness” or Jennings in combination with Fehring, nor would one skilled in the art be motivated to combine Fehring with “Fertility Awareness” or Jennings to achieve the foregoing combination. Therefore Claim 21 should not be rejected under 35 U.S.C. §103(a) based on such combined references and should be allowed.

As discussed previously, “Fertility Awareness” discloses a necklace with only four different types of beads and Jennings discloses a necklace or chain with at most five different types of beads. In contrast, the apparatus of Claim 21 recites nine different types of beads. Furthermore, each of the beads in “Fertility Awareness” and Jennings is fixed in a pre-positioned order on the string, whereas the beads in the apparatus of Claim 21 are positionable on the string each day to provide the desired visual indications relating to the woman’s menstrual cycle. Additionally, the menstrual phase indications provided by the beads of the “Fertility Awareness” 28-bead device and the Jennings 32-bead device differ from the indications provided by the nine different types of beads in the apparatus of Claim 21. Thus, regardless of whether Fehring can properly be relied upon as disclosing or otherwise suggesting the use of an ovulation prediction kit in connection with a bead-based fertility awareness apparatus, Fehring cannot be combined with “Fertility Awareness” or Jennings to achieve the combination of limitations recited in Claim 21.

Assuming that “Fertility Awareness” or Jennings did disclose all of the limitations of Claim 21 with the exception of the ovulation prediction kit, which they do not, one skilled in the art would not be motivated to combine the use of an ovulation prediction kit with a bead-based fertility awareness apparatus. In this regard, ovulation prediction kits were developed as an aid to achieving fertility and not for preventing pregnancy. Fehring specifically notes: “Urine LH self-test kits are used by women who want to time intercourse more precisely to become pregnant, often because they suffer from infertility problems. These ovulation detection self-test kits should not be used by women who wish to avoid pregnancy because such tests do not give an adequate warning time as to when ovulation is pending.” (See Fehring, first column on page 233). Thus, Fehring specifically teaches away from the use of an ovulation prediction kit as a means of avoiding pregnancy, and, therefore, one skilled in the art would not, in view of Fehring, be inclined to combine an ovulation prediction kit with a bead-based menstrual phase indication device having a purpose of helping a woman avoid pregnancy. The combination of the ovulation

prediction kit with the bead-based fertility awareness apparatus represents a new, unique and novel application of the ovulation prediction kit that is not obvious to those skilled in the art.

Independent Claim 27 is directed to an apparatus that provides daily visual indications relating to various phases of a woman's menstrual cycle. The apparatus of Claim 27 includes: (1) a string; and (2) a plurality of beads, each bead being positionable on the string to indicate different days of the woman's menstrual cycle. The plurality of beads includes: (a) two types of beads associated with a menses phase of the woman's menstrual cycle; (b) two types of beads associated with a fertile phase of the woman's menstrual cycle one of which is associated with the day the woman's menses phase crosses over to a fertile phase of the woman's menstrual cycle, wherein the type of bead associated with the day the woman's menses phase crosses over to the fertile phase of the woman's menstrual cycle is orientable on the string to indicate a result of an observation of the woman's cervical mucus; (c) two types of beads associated with days on which the woman's cervical mucus is drying up; and (d) two types of beads associated with an infertile phase of the woman's menstrual cycle. The foregoing combination of limitations is not anticipated by any one of "Fertility Awareness", Costello or Jennings and is not obvious based on any one of these references in view of Fehring. In addition to the previously noted deficiencies of "Fertility Awareness", Jennings, Costello and Fehring, none of the foregoing references disclose a fertility awareness apparatus including a bead that is orientable on the string to provide an indication of a result of an observation of the woman's cervical mucus. Thus, Claim 27 is novel and nonobvious and should also be allowed.

Since each of independent Claims 13, 21 and 27 are allowable, there is no need to separately address the patentability of the respective claims depending therefrom.

Conclusion:

Based upon the foregoing, Applicant believes that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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APPENDIX
REPLACEMENT DRAWING SHEET